Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Revised Telecommunications Reporting Worksheet (FCC Form 499-A) for April 2, 2001 Filing	)	CC Docket No. 98-171
	)	
	)	

To: The Common Carrier Bureau

PETITION FOR RECONSIDERATION OR WAIVER

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SUMMARY

Loral CyberStar, Inc. ("Loral CyberStar") submits this petition for reconsideration of the significant policy reversal adopted by the Common Carrier Bureau through the issuance of the March 1, 2001, public notice announcing the release of the revised Telecommunications Reporting Worksheet, FCC Form 499-A ("April 2001 Form") and accompanying instructions. The April 2001 Form included a substantially revised *de minimis* worksheet that, for the first time, requires the potential filer to include the interstate and international contribution base (including telecommunications revenues) of the filer and the filer's affiliates. The addition of affiliate revenues, particularly telecommunications revenues, in calculating the applicability of the 8 percent international and *de minimis* exceptions is a substantial departure from previous Commission policy.

Loral CyberStar believes that this departure from previous policies is unlawful and imposes significant financial penalties on Loral CyberStar. Loral CyberStar seeks reconsideration of the revised policy on the grounds that it violates Section 254 of the Communications Act of 1996 in that it creates a support mechanism that is not equitable, nondiscriminatory, specific or predictable. The Petition also establishes that the revisions were adopted in violation to the Administrative Procedure Act because the revisions were adopted without notice and an opportunity for comment, exceeded the Common Carriers Bureau's authority and were adopted with a retroactive effect.

Loral CyberStar requests that the Commission withdraw the *de minimis* worksheet attached to the April 2001 Form and reissue the *de minimis* worksheet included with FCC Form 499-A (February 2000). In the alternative, Loral CyberStar request a waiver of the *de minimis*

worksheet's requirement that Loral CyberStar include interstate revenues from all its affiliates in determining whether it meets the 8 percent international exception rule.

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PETITION FOR RECONSIDERATION OR WAIVER

Loral CyberStar, Inc. ("Loral CyberStar"), by its attorneys and pursuant to Section 405 of the Communications Act of 1934, as amended ("the Act"), and Section 1.106(a) of the Commission's rules,[1] submits this petition for reconsideration of the policy adopted by the Common Carrier Bureau ("CCB" or "the Bureau") through the issuance of the March 1, 2001, public notice announcing the release of the revised Telecommunications Reporting Worksheet, FCC Form 499-A ("April 2001 Form") and accompanying instructions.[2] The April 2001 Form[3] included a substantially revised *de minimis* worksheet (Figure 1 in the instructions to the form) that, for the first time, requires the potential filer to include the interstate and international contribution base (including telecommunications revenues) of the filer and the filer's affiliates. The addition of affiliate revenues, particularly telecommunications revenues, in calculating the

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1 47 U.S.C. § 405 (2000); 47 C.F.R. § 1.106(a) (2000).

2 Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 2, 2001 Filing By All Telecommunications Carriers, CC Docket No. 98-171, *Public Notice*, DA 01-548 (rel. Mar. 1, 2001).

3 Attached as Exhibit 1.

applicability of the 8 percent international and *de minimis* exceptions is a substantial reversal of the Commission's previous universal service policy and was adopted without notice and comment.

The application of the new form's policy to Loral CyberStar will require Loral CyberStar to pay far more in universal service fees for the year 2000 than it earned in interstate revenues.[4] This result is a violation of the requirement of Section 254 of the Act that the Commission's universal service support mechanisms be equitable, nondiscriminatory, specific and predictable.[5] Moreover, the issuance of the revised worksheet violates the Administrative Procedure Act ("APA") requirement that substantive revisions to rules be adopted only after notice and comment.[6] This result is also contrary to the existing policy of the Commission, as evidenced by advice Loral CyberStar has previously been provided by the Universal Service Administrative Co. ("USAC") as well as the requirements of earlier forms.

Accordingly, Loral CyberStar requests that the Commission withdraw the *de minimis* worksheet attached to the April 2001 Form and reissue the *de minimis* worksheet included with FCC Form 499-A (February 2000).[7] In the alternative, Loral CyberStar requests a waiver of the *de minimis* worksheet's unsupported requirement that Loral CyberStar include interstate revenues from all its affiliates in determining whether it meets the 8 percent international exception rule, and thus must calculate its universal service contribution based on international

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4 Absent inclusion of affiliate revenues, Loral CyberStar's interstate revenues would constitute 3% of its total interstate and international contribution base, well below the 8% exception.

5 47 U.S.C. § 254(b)(4), (b)(5).

6 5 U.S.C. § 553(c).

7 Attached as Exhibit 2.

and interstate telecommunications revenues, until such time as the Commission resolves the complex issue raised in this pleading.

I. STATEMENT OF INTEREST AND FACTS

Loral Space & Communications Ltd. ("Loral"), through its subsidiaries, manufactures and operates geosynchronous and low-earth-orbit satellite systems and develops satellite-based networks for the provision of an array of communications and information services. Loral is organized in three operating business units: broadband data services (Loral CyberStar), satellite manufacturing and technology (Space Systems/Loral), and fixed satellite services (Loral Skynet, Satmex, Europe*Star and the Loral Global Alliance). Loral and its business units hold FCC licenses to launch and operate satellite systems in the C-, Ka- and Ku-bands, as well as numerous earth station licenses.

Although Loral CyberStar generates most of its revenue from non-telecommunications services, some of its revenue is derived from the provision of international telecommunications and some *de minimis* amounts from the provision of interstate telecommunications. While it recognized that the rules and the forms taken together were ambiguous, on March 31, 2000, Loral CyberStar, out of an abundance of caution, filed a revised FCC Form 499-S and its Form 499-A, based on the belief that certain affiliate revenues required Loral CyberStar to contribute to the universal service fund.[8] Shortly after filing however, on April 7, 2000, Loral CyberStar received a telephone call from a USAC representative advising Loral CyberStar that because Loral CyberStar's 1999 interstate revenues were less than 8 percent of its total contribution base (indeed, Loral CyberStar had no interstate revenue in 1999), Loral CyberStar had no revenue that

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[8] In preparing revenue information for its April 1, 2000, FCC Form 499-A, Loral CyberStar discovered that it had made various misclassifications on its September 1, 1999, submission by including in its end-user telecommunications revenues certain revenue that is exempt from universal service assessment.

was assessable under the universal service regime. USAC emphasized that Loral CyberStar qualified for the 8 percent international and *de minimis* exceptions irrespective of its affiliation with providers of interstate telecommunications (*i.e.*, Loral Skynet).[9] This advice was based on the decision in *Texas Office of Public Utility Counsel*[10] and the Commission's corresponding *16th Order on Reconsideration.*[11] The Commission's *16th Order on Reconsideration* determined that "[a] provider of interstate and international telecommunications shall not be required to contribute based on its international end-user telecommunications revenues if its interstate end-user telecommunications revenues constitute less than 8 percent of its combined interstate and international end-user telecommunications revenues."[12]

USAC then faxed Loral CyberStar a copy of the public notice announcing release of forms for amending the September 1999 FCC Form 499-S to reflect the new 8 percent exception and requested that Loral CyberStar file an amended form.[13] On April 25, 2001, a representative of Loral had a subsequent conversation with a USAC employee in which USAC confirmed its earlier instructions that Loral CyberStar qualified for the 8 percent exception irrespective of its

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9 Loral Skynet and Loral CyberStar have operated as separate affiliates with distinct business operations since their acquisition in 1997 and 1998, respectively, by Loral Space & Communications Ltd., before the Commission's release of the 16th Order on Reconsideration, infra note 11.

10 Texas Off. of Pub. Util. Couns. v. FCC, 183 F.3d 393 (5th Cir. 1999).

11 In re Federal-State Joint Board on Universal Service; Access Charge Reform, *Sixteenth Order on Reconsideration in CC Docket 96-45, Eighth Report and Order in CC Docket 96-45, Sixth Report and Order in CC Docket 96-262*, 15 FCC Rcd. 1679 (1999) [hereinafter *16th Order on Reconsideration*].

12 Id. at ¶ 19.

13 See Common Carrier Bureau Announces Release of Forms for Amending March 1999 Universal Service Worksheet (FCC Form 457) and September 1999 Telecommunications Reporting Worksheet (FCC Form 499-S), CC Dkt. No. 96-45, *Public Notice*, DA 99-2310 (rel. Oct. 28, 1999) (only a contributor whose interstate end-user telecommunications revenues constituted less than 8 percent of the contributor's interstate and international end-user telecommunications revenues was supposed to submit this amendment form).

affiliation with Loral Skynet. USAC specifically stated that Loral Skynet would not be considered an affiliate of Loral CyberStar pursuant to the FCC Form 499 and FCC rules because Loral CyberStar had a separate tax identification number and was separately incorporated. USAC repeated its advice that Loral CyberStar complete an amended form, which Loral CyberStar filed on April 27, 2000.

In its cover letter to that amendment, Loral CyberStar requested that its contributions to the universal service fund be immediately recalculated for the 1999 reporting year and going forward. Because Loral CyberStar had no interstate revenue for 1999, it expected that there would be no liability for contributions to the universal service fund and therefore requested a refund of the $122,785.13 payment it had made at the time it filed its revised September 1999 FCC Form 499-S. A USAC representative inferred that Loral CyberStar would receive a refund of its payment; that refund was subsequently issued.[14]

In analyzing its obligation to complete the September 2000 FCC Form 499-S, which covered the first six months of 2000, Loral CyberStar completed the *de minimis* worksheet included as Figure 1 to the instructions to that form.[15] That worksheet also clearly conformed with USAC's advice that each company's telecommunications revenues are evaluated without regard to any affiliate's interstate telecommunications revenues. Accordingly, Loral CyberStar again determined that because its interstate revenue was less than 8 percent of its total contribution revenue base and because of the *de minimis* amount of Loral CyberStar's interstate revenue, Loral CyberStar was not obligated to file the September 2000 FCC Form 499-S. Loral

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[14] Attached as Exhibit 3

[15] Attached as Exhibit 4.

CyberStar filed a certification to this effect with USAC and has retained its completed *de minimis* worksheet as required by the rules.

The April 2001 Form, however, requires that the filer include telecommunications revenues from affiliated entities on the *de minimis* worksheet. This reflects a complete reversal of the policy articulated and enforced by USAC and is inconsistent with prior forms and administration of the FCC's policy. No previous universal service form has included a mechanism by which the filing entity was required to consider the telecommunications revenues (or for that matter telecommunications services revenues) of its affiliates to determine its own contribution liability.

The economic effects of the policy reversal are substantial. Consistent with the policy enunciated and enforced by the Commission and USAC prior to March 1, 2001, Loral CyberStar determined that, assuming interstate revenues stayed relatively the same, it would not be required to contribute to the universal service fund for 2000. Based on the new policy incorporated into the *de minimis* worksheet associated with the April 2001 Form, however, Loral CyberStar's universal service liability may be several hundreds of thousands of dollars.

This result is clearly inequitable in that it would force Loral CyberStar to pay more in universal service contributions than it generates in interstate telecommunications revenues, and would require Loral CyberStar to incur a substantial loss to provide the small amount of interstate service that it offers.[16] This result is contrary to the Act and *Texas Office of Public Utility Counsel*.[17] Loral CyberStar has not reserved the appropriate funds for the hundreds of

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16 Loral Skynet, primarily a provider of interstate telecommunications, files its own universal service forms and contributes to the fund on the basis of its end-user telecommunications revenues.

17 183 F.3d at 434.

thousands of dollars that may be due pursuant to the new requirement. Further, as a result of the retroactive effect of the new form, it would be difficult for Loral CyberStar to impose a specific universal service charge to recover its universal service obligations from its customers.

II. THE APRIL 2001 DE MINIMIS WORKSHEET VIOLATES THE ACT'S REQUIREMENTS THAT THE UNIVERSAL SERVICE FUND CONTRIBUTION MECHANISM BE EQUITABLE, NONDISCRIMINATORY, SPECIFIC AND PREDICTABLE

The April 2001 *de minimis* worksheet violates the principles governing universal service as set forth in Section 254 of the Act. First, by requiring Loral CyberStar to contribute more to the universal service fund than it earns from the sale of interstate telecommunications, the worksheet violates Section 254(b)(4)'s requirement that universal service contributions be equitable and nondiscriminatory.[18] Second, because it (1) results in a substantial contribution when Loral CyberStar's predicted contribution based on the September 2000 form was zero and (2) contradicts the Commission's rules, the *de minimis* worksheet further violates Section 254's requirement that the universal service fund contribution mechanism be specific and predictable.[19] As a result, the Commission should withdraw the April 2001 *de minimis* worksheet and reissue the April 2000 *de minimis* worksheet.

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[18] See 47 U.S.C. § 254(b)(4).

[19] See id. at § 254(b)(5).

A. The Revised April 2001 Worksheet Violates The Act's Requirement That Required Universal Service Fund Contributions Be Equitable And Nondiscriminatory

Section 254 of the Act requires, in part, that universal service contribution requirements be imposed "on an equitable and nondiscriminatory basis."[20] In *Texas Office of Public Utility Counsel v. FCC*, COMSAT, a provider of interstate and international telecommunications services, challenged the Commission's decision to assess universal service contributions based on a provider's combined interstate and international revenues.[21] COMSAT argued that the Commission's inclusion of international revenues was inequitable because it required COMSAT to contribute more to the universal service fund than it was generating in interstate revenues. COMSAT maintained that "this result alone violates the equitable language of the statute."[22] Also, because it was being treated differently from other providers of international service, COMSAT contended that the Commission had violated Section 254(d)'s nondiscrimination requirement.

The Fifth Circuit agreed, finding that the Commission's "interpretation of 'equitable and nondiscriminatory,' [which] allow[ed] it to impose prohibitive costs on carriers such as COMSAT, is 'arbitrary and capricious and manifestly contrary to the statute.' "[23] The Court found that the Commission had failed to offer a reasonable explanation of how requiring COMSAT and other companies to "incur a loss to participate in interstate service" satisfied the

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20 47 U.S.C. § 254(d) ("Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.").

21 See 183 F.3d at 433.

22 Id.

23 Id. at 435–36 (citing Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984)).

"equitable and nondiscriminatory" requirements of the statute.[24] The Fifth Circuit thus reversed and remanded that portion of the Commission's order.

On remand, the Commission modified its regulations to adopt the so-called "8 percent rule."[25] Under that rule, a telecommunications provider would not have to contribute based on its international end-user telecommunications revenues unless its interstate end-user revenues exceeded 8 percent of its combined international and interstate revenues.[26] The Commission concluded that this satisfied the Fifth Circuit's concerns that the universal service mechanism be equitable and nondiscriminatory.[27] To implement the modification, the Commission required contributors that qualified for the exception to amend their March and September 1999 forms.[28] It also indicated that it would revise the April 2000 Form 499 to incorporate the 8 percent rule.[29] Loral CyberStar completed the revised form. Neither the amended September 1999 form or the April 2000 form required affiliate revenues to be considered when evaluating the filer's ability to qualify for the 8 percent exception.

Last month, Loral CyberStar compiled data to complete the April 2001 Form for the year 2000. The *de minimis* worksheet included with the form's instructions had been substantially revised, without explanation, to require inclusion of affiliate revenues.[30] This reflected a

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24 Id. at 435.

25 See 16th Order on Reconsideration, 15 FCC Rcd. 1679 at ¶ 19.

26 See id.

27 See id.

28 See id. at ¶ 27.

29 See id.

30 See Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 6 (Figure 1) (Feb. 2001) [hereinafter Instructions].

complete reversal of the policy of excluding affiliate revenues. These changes added four lines to the *de minimis* worksheet which were not simply clarifications of prior universal service requirements. Rather, they completely revised the equation for computing the 8 percent exception. As a result of these amendments, Loral CyberStar's estimated annual contribution skyrocketed from a predicted contribution of zero to several hundred thousand dollars. This new contribution level substantially exceeded the total amount that Loral CyberStar had generated from interstate telecommunications during 2000.

This result is precisely what the Fifth Circuit was trying to avoid and deemed to be inequitable and discriminatory in *Texas Office of Public Utility Counsel.* The Fifth Circuit specifically found that it would be inequitable and discriminatory, as well as "arbitrary and capricious and manifestly contrary to the statute" for the Commission to compel companies to contribute more in universal service than they generate from interstate service or to devise any rule that would damage some international carriers more than it harms others.[31] The fact that the revised *de minimis* worksheet will require Loral CyberStar to pay substantially more to the universal service fund than it earns from providing interstate service alone renders the contribution mechanism as set forth in the worksheet inequitable and discriminatory under the statute and the Fifth Circuit's holding in *Texas Office of Public Utility Counsel.*[32]

B. The Revised April 2001 Worksheet Violates The Act's Requirement That Any Contribution Mechanism Be Specific And Predictable

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31 See Texas Off. of Pub. Util. Couns., 183 F.3d at 435 (citing Chevron, 467 U.S. at 844).

32 See 47 C.F.R. § 254; Texas Off. of Pub. Util. Couns., 183 F.3d at 434–35. Indeed, based on the CCB amendments to the 8% rule, even if Loral CyberStar had generated a *single dollar* in interstate revenues, it would still owe several hundred thousand dollars in universal service contributions.

In the *16th Order on Reconsideration*, in addition to finding that its 8 percent rule conformed with the Fifth Circuit's mandate, the Commission further concluded that the revised rule also met the Act's requirement that the mechanism be specific and predictable because it:

> establish[ed] a bright-line rule for providers. *As soon as providers prepare their worksheets, they will know with certainty* whether their interstate end-user telecommunications revenues comprise 8 percent or more of their total interstate and international end-user telecommunications revenues and, thus, *whether they must contribute on the basis of their international end-user telecommunications revenues during the upcoming quarters* in which their reported revenues will be assessed.[33]

As a result, providers would be able "to make decisions based on the specific and predictable operation of the support mechanism."[34]

In the three filing periods since the *16th Order on Reconsideration*, Loral CyberStar has qualified for the 8 percent exception and has not had to contribute to the universal service fund. Indeed, USAC advised Loral CyberStar that it qualified for a refund for its overpayments for 1999 and subsequently issued that refund based only on consideration of Loral CyberStar's revenues. In September 2000, as the Commission had envisioned, Loral CyberStar completed the *de minimis* worksheet and determined "with certainty" that it fit under the 8 percent rule and would not owe any universal service fees. Based on these calculations and its belief that its revenue structure would remain substantially the same for the second half of 2000, Loral CyberStar did not include any reserves for 2000 universal service contributions in its 2001 budget. Last month, however, Loral CyberStar completed the April 2001 *de minimis* worksheet. As a result of the CCB's revisions, instead of being exempt from contributing, Loral CyberStar

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33 16th Order on Reconsideration, 15 FCC Rcd. 1679 at ¶ 24 (emphasis added); see also id. at ¶ 19 n.56 (adoption of a rule using a fixed percentage would allow "carriers to know with *certainty* whether they qualify for the limited international exception") (emphasis added).

34 Id.

may now owe hundreds of thousands of dollars in universal service fees, a figure far in excess of its interstate revenue.

It is inconceivable that a universal service contribution mechanism that results in such wildly disparate calculations for a single year can meet the Act's requirement that it be specific and predictable.[35] Indeed, the Commission has rejected other proposed mechanisms based on far less significant deficiencies. In the *17th Order on Reconsideration*, the Commission rejected a proposal that it calculate universal service contribution factors based on forecasted revenues because such a mechanism would increase "the likelihood that universal service contributors will be overbilled in some periods and underbilled in other periods[.]"[36] The Commission concluded that such a result was "contrary to Congress's directive that the universal support mechanisms be specific [and] predictable[.]"[37]

Similarly, when adopting a methodology for determining non-rural carriers' support amounts, the Commission found its methodology to be specific and predictable because (1) it could be easily replicated by carriers to determine the support they would receive; and (2) it would "change over time only in the ways [that the Commission had] specifically describe[d] [t]herein or pursuant to modifications that [it] ma[d]e in the future pursuant to public notice and comment[.]"[38] Although the latter case occurred in the context of universal service support, not

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35 See 47 U.S.C. § 254(b)(5). The Fifth Circuit noted that Section 254(b) "identifies a set of principles and does not lay out any specific commands for the FCC." Texas Off. of Pub. Util. Couns., 183 F.3d at 425. It is thus reviewed for reasonableness under the second step of Chevron. See id. at 425–26.

36 In re Federal-State Joint Board On Universal Service, CC Dkt. No. 96-45, *Memorandum Opinion and Order and Seventeenth Order on Reconsideration*, 15 FCC Rcd. 20769 at ¶ 23 (1999).

37 Id.

38 In re Federal-State Joint Board On Universal Service, CC Dkt. No. 96-45, *Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432 at ¶ 39 (1999).

contributions, predictability with regard to universal service contribution fees is at least as—if not more—important than predictability for universal service support payments.

Moreover, the amended *de minimis* worksheet is inconsistent with the Commission's rules, further rendering the contribution mechanism vague and unpredictable. Section 54.706(c) of the Commission's rules provides that, for purposes of assessing whether a contributor qualifies for the 8 percent exception, it shall include all of its "affiliated providers of telecommunications *services*."[39] "Telecommunications services," by definition, are common carrier services.[40] Neither Loral CyberStar, nor any of its affiliates provides telecommunications services. Instead, they provide telecommunications (a non-common carrier service) and non-telecommunications to their customers.[41] Accordingly, the plain language of Rule 54.706(c) does not require that the revenues of Loral CyberStar's affiliates be attributed to Loral CyberStar for purposes of the 8 percent rule.[42] However, despite the rule's plain language, the revised *de minimis* worksheet requires a contributor to report its interstate and international contribution base not just for affiliated providers of telecommunications services, but for "*all affiliates*."[43]

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39 47 C.F.R. § 54.706(c) (emphasis added).

40 See In re Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, *Report and Order*, 12 FCC Rcd. 8776 at ¶ 785 (1997).

41 As noted by the Commission, unlike providers of telecommunications services, providers of telecommunications do not offer telecommunications "for a fee directly to the public (*i.e.*, it would not be telecommunications offered on a common carrier basis.)." Id. at ¶ 793.

42 Nor is this distinction one of semantics. Congress, the Act, and the Commission all distinguish between providers of telecommunications and providers of telecommunications services. Section 254 itself treats the two categories differently, requiring that providers of interstate telecommunications services "shall contribute" to the universal service fund, while providers of interstate telecommunications "may be required to contribute." 47 U.S.C. § 254(d). In its prior orders, the Commission relied on this difference to distinguish between "mandatory" and "permissive" contributors to USF. See In re Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, *Report to Congress*, 13 FCC Rcd. 11501 at ¶¶ 123–24, 131.

43 Instructions, *supra* note 30, at 6 (Figure 1).

This contradiction requires Loral CyberStar to guess the nature of its obligations. On the one hand, if the rule trumps the worksheet, Loral CyberStar does not have to include its affiliates' revenues in the calculation and it qualifies for the 8 percent exception. On the other hand, to qualify for the exception, USAC requires an officer of the company to certify that he has performed the *de minimis* test in the Form 499-A instructions, and that, as a result of performing that test, the filer qualifies for the 8 percent exception. However, because the worksheet sweeps in all affiliates, and not just those that provide telecommunications services, Loral CyberStar cannot certify to USAC that it qualifies for the exception. Nor are these distinctions without import. Under the former scenario, Loral CyberStar qualifies for the *de minimis* exception and owes nothing to the universal service fund, while under the latter, Loral CyberStar owes several hundred thousand dollars.

The CCB's improper revisions to the April 2001 *de minimis* worksheet, which resulted in these contradictory requirements, prevent companies such as Loral CyberStar from determining specifically and predictably what their universal service obligations are. Even if that were not the case, by requiring Loral CyberStar to contribute more in universal service fees than it earned in interstate telecommunications revenues, the revised worksheet contravenes the Fifth Circuit's ruling in *Texas Office of Public Utility Counsel v. FCC*. The revisions to the April 2001 worksheet must be stricken.

III. THE COMMISSION HAS FAILED TO IMPLEMENT ITS DE MINIMIS WORKSHEET CONSISTENT WITH THE REQUIREMENTS OF THE APA

In releasing a new worksheet for the calculation of the 8 percent international and *de minimis* exceptions for universal service contributors, the CCB has violated the APA. First, the Bureau has effected a substantive change to the Commission's rules regarding affiliate revenue calculations on the *de minimis* worksheet, and has done so without the notice and comment

required by the APA. Second, Loral CyberStar could justifiably rely on previous USAC and Bureau interpretations of the Commission's rules until such interpretations were changed pursuant to full notice and comment. Third, the Bureau has exceeded its ability to act under delegated authority. Finally, the Bureau has improperly given this rulemaking retroactive effect. For these reasons, Loral CyberStar respectfully requests that the Bureau reconsider its release of the revised *de minimis* worksheet.

C. The *De Minimis* Worksheet Effected a Substantive Change to the Rules That Was Improperly Enacted Without Notice and Comment

The APA requires that, before federal agencies can enact or change substantive rules, they must provide notice to the public and an opportunity to comment on the proposed rules.[44] In issuing the revised *de minimis* worksheet without the required notice and comment, the CCB has failed to follow the requirements of the APA and has improperly effected a substantive change to the universal service rules.

1. Release of the revised *de minimis* worksheet amounts to a substantive rule change.

Under the APA, a rule is defined as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy[.]"[45] This definition is intentionally broad; it includes nearly every statement an agency may make.[46] " 'Rulemaking,' as defined in the APA, includes not only the agency's

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44 See 5 U.S.C. § 553(c) ("General notice of proposed rule making shall be published in the Federal Register . . . After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments . . .").

45 5 U.S.C. § 551(4).

46 See Batterton v. Marshall, 648 F.2d 694, 700 (1980).

process of formulating a rule, but also the agency's process of modifying a rule."[47] The Bureau's release of a revised *de minimis* worksheet thus clearly falls within the scope of the APA's definition of a rulemaking.

The Commission has recognized that " 'substantive rules' requiring notice and comment are those that effect change in existing law or policy or which affect individual rights and obligations."[48] The CCB's release of the revised *de minimis* worksheet implements a change in the way the Commission requires telecommunications providers to determine whether they qualify for the 8 percent international and *de minimis* exceptions from contribution to the universal service fund. By altering the Commission's approach to these exceptions, the revised worksheet has imposed on Loral CyberStar and the industry a distinct obligation that had not existed previously, with an intentional and binding effect, indicating a definite change in Commission policy. Therefore, the Bureau's release of the revised worksheet is a substantive rulemaking action that required notice and comment under the APA.

2. The Bureau's March 2001 *de minimis* worksheet improperly includes all affiliates in its calculations

In the *16th Order on Reconsideration,* the Commission enacted a change to the universal service contribution mechanism that purported to incorporate the decision of *Texas Office of Public Utility Counsel v. FCC.* As noted above, the Fifth Circuit required the Commission to

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47 Alaska Hunters Prof. Ass'n, Inc. v. Fed. Aviation Admin., 177 F.3d 1030, 1034 (D.C. Cir. 1999) (citing 5 U.S.C. § 551(5) and Paralyzed Veterans of Am. v. D.C. Arena, 117 F.3d 579, 586 (D.C. Cir. 1997)).

48 In re National Exchange Carrier Association, Inc., Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, ASD Dkt. No. 98-96, *Order,* 15 FCC Rcd. 1819 at ¶ 6 n.22 (1999) (citing Paralyzed Veterans of Am. v. West, 138 F.3d 1434 (Fed. Cir. 1998)). "In determining whether a rule is substantive, we must look at its effect on those interests ultimately at stake in the agency proceeding." In re Applications of Columbia Bible College Broadcasting Co., Monroe, North Carolina, MM Dkt. No. 90-607, *Hearing Designation Order,* 6 FCC Rcd. 516 at ¶ 18 (1991) (citing Pickus v. U.S. Bd. of Parole, 507 F.2d 1107 (D.C. Cir. 1974)).

include in its contribution mechanism an exception that would allow providers of primarily international services to avoid contributing to universal service if such contribution would exceed their total interstate revenues. The resulting 8 percent international exception was codified in Section 54.706(c) of the Commission's rules, which also stated, "[f]or purposes of this paragraph, an 'entity' shall refer to an entity that is subject to the universal service reporting requirements of 47 CFR 54.711 and shall include all of that entity's affiliated providers of telecommunications services."[49]

However, when the Bureau released a *de minimis* worksheet revised to reflect the *16th Order on Reconsideration* in March 2000, it did not incorporate any requirement to include affiliate revenues in the calculations to determine whether an entity met the 8 percent and *de minimis* exceptions.[50] In fact, this version of the *de minimis* worksheet made no provision for affiliate revenues to be included. Further, USAC advised Loral CyberStar that it need not include affiliate revenues in calculating whether it was required to file Form 499 or contribute to the universal service fund.

The Bureau's universal service form issued in August 2000 confirmed this interpretation, again providing no place to include affiliate revenues in the 8 percent and *de minimis* calculations. It was not until the release of the revised *de minimis* worksheet on March 1, 2001, that the Bureau required affiliate telecommunications revenues to be included in the calculation

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[49] 47 C.F.R. § 54.706(c) (emphasis added).

[50] None of the revisions to the *de minimis* worksheets issued following the *16th Order on Reconsideration,* until the April 2001 version, incorporated affiliate revenues. See, e.g., Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) For April 1, 2000 Filing By All Telecommunications Carriers, CC Dkt. No. 98-171, *Public Notice,* DA 00-471 (rel. Mar. 1, 2000); Common Carrier Bureau Announces Release of September Version of Telecommunications Reporting Worksheet (FCC Form 499-S) for Contributions to the Universal Service Support Mechanisms, CC Dkt. No. 98-171, *Public Notice,* DA 00-1735 (rel. Aug. 1, 2000).

of the 8 percent and *de minimis* exceptions. Such a substantive change in the rules could not have been accomplished by the full Commission without notice and comment.

Any substantive rule must be enacted consistent with the notice and comment procedures of the APA. By issuing the *de minimis* worksheet with the new obligation to include affiliate telecommunications revenues in the context of a public notice, without first providing the public with notice of the change and an opportunity to comment, the Bureau has violated the APA, and the new rule thus enacted must be invalidated.

D. Loral Was Justified in Relying on USAC's and the Bureau's Interpretation of the *De Minimis* Worksheet Under the *Alaska Hunters* Precedent

Although administrative law generally provides that an agency may not be held accountable to the interpretations of agency rules made by a staff member, under certain circumstances the precedent laid out in *Alaska Professional Hunters Association, Inc. v. Federal Aviation Administration*[51] will apply. That doctrine applies in this situation, and thus Loral CyberStar was justified in relying on the interpretation given by USAC and affirmed by the Bureau's subsequently released worksheets.

Alaska Hunters and subsequent applications of the precedent[52] establish that, when an agency gives its rules an interpretation over a period of time that becomes standard practice and is affirmed by agency releases, regulated entities are justified in assuming that the agency will not change that interpretation without notice and comment rulemaking. In *Alaska Hunters*, the regional office of the FAA had been advising pilot/guides in the Alaskan wilderness that,

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51 177 F.3d 1030 (D.C. Cir. 1999) [hereinafter *Alaska Hunters*].

52 See, e.g., Shell Offshore Inc. v. Babbitt, 238 F.3d 622 (5th Cir. 2001); Appalachian Power Co. v. Envtl. Prot. Agency, 208 F.3d 1015 (D.C. Cir. 2000); United States v. Am. Nat'l Can Co., 126 F. Supp. 2d 521 (N.D. Ill. 2000).

because their charter flights were incidental to their guide businesses, they were not required to comply with Parts 121 and 135 of the FAA's rules. The court stated, "[i]t is true that when a local office gives an interpretation of a regulation or provides advice to a regulated party, this will not necessarily constitute an authoritative administrative position, particularly if the interpretation or advice contradicts the view of the agency as a whole." However, the court chose to distinguish this situation because of the uniformity of the advice, the length of time that the advice had been given, and the fact that the FAA had recognized the policy in releases during that time. The court decided that, "[o]nce an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and comment rulemaking."[53]

The facts in this Petition clearly meet the *Alaska Hunters* standard and present a more compelling case because USAC's administration of the *16th Order on Reconsideration* clearly excluded affiliates' revenues from inclusion in the *de minimis* worksheet. Moreover, USAC, unlike the regional FAA office in *Alaska Hunters*, is the sole and national administrative agency for universal service. Because the revised *de minimis* worksheet changes the requirements for qualifying under the 8 percent and *de minimis* exceptions, as described by USAC and as affirmed by subsequent Bureau releases, the Bureau improperly implemented that change without notice and comment. Before the revisions were made to the April 2001 Form, USAC told Loral CyberStar that affiliate revenues need not be considered when qualifying for the 8 percent exception, and that advice was reflected in the structure of subsequent versions of the *de minimis*

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[53] Paralyzed Veterans, 117 F.3d at 586.

worksheet. Moreover, USAC, unlike the regional FAA office in *Alaska Hunters*, is the sole and national administrative agency for universal service.

Because of USAC's advice and based on the previously released *de minimis* worksheets, Loral CyberStar has set a budget with the assumption that it would not be required to contribute to universal service for the year 2000. It and other providers had no way of knowing that the Bureau would change the universal service form and corresponding *de minimis* worksheet without notice. The *Alaska Hunters* precedent exists to protect regulated entities from being caught unaware by rule changes in exactly this fashion.

E. The Common Carrier Bureau's Issuance of the *De Minimis* Worksheet Was an Improper Exercise of Delegated Authority

The CCB has exceeded the authority delegated by the Commission "to waive, reduce, or eliminate contributor reporting requirements . . ." and "to require any additional contributor reporting requirements necessary to the sound and efficient administration of the universal service programs."[54] Although the CCB may act under delegated authority to make changes to the administrative aspects of the universal service reporting requirements, the Commission has emphasized that the Bureau has no authority to make changes "to the substance of the underlying programs."[55]

The revised *de minimis* worksheet contains a very significant departure from the Commission's rule enacted in the *16th Order on Reconsideration.* Rule 54.706(c) includes in the

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54 In re Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Dkt. No. 97-21, *Report and Order and Second Order on Reconsideration,* 12 FCC Rcd. 18400 at ¶ 81 (1997); see also 47 C.F.R. § 54.711(c).

55 In re 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Dkt. No. 98-171, *Report and Order,* 14 FCC Rcd. 16602 at ¶ 40 (1999).

definition of "entity" all affiliates who provide telecommunications services. Under the revised *de minimis* worksheet, however, an entity is required to include in its calculations the revenue of all affiliates who provide telecommunications, and not just those who provide telecommunications services. The worksheet requires providers to incorporate revenue information from affiliates as would be listed in line 420 of FCC Form 499-A. This line calculates information about both telecommunications services and telecommunications. Thus, the revised worksheet incorporates a much broader class of affiliates than is contemplated by the original rule.[56]

"Telecommunications service" is defined under the act as "the offering of telecommunications for a fee directly to the public[.]" (a common carrier service)[57] "Telecommunications" may be offered by entities that do not provide "telecommunications services," but that offer to third parties "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received[.]" (a non-common carrier service)[58] By including in the *de minimis* worksheet the revenue of affiliates who provide telecommunications, and not just of those who provide telecommunications services, the Bureau has expanded the scope of the rule as enacted by the Commission and has created a new substantive rule.

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[56] It is this revision that caught Loral unawares. Loral CyberStar provides no telecommunications services, nor does it have any affiliates that provide telecommunications services. Even with the requirements of Section 54.706(c), under previous versions of the worksheet (which did not require the inclusion of revenues from any affiliates), Loral CyberStar was not required to contribute to the universal service fund. By changing the *de minimis* worksheet to include all revenues from affiliates who provide telecommunications, Loral CyberStar will now be required to make substantial universal service payments even though it provides no telecommunications services and only a *de minimis* amount of interstate telecommunications.

[57] 47 U.S.C. § 153(46).

[58] 47 U.S.C. § 153(43).

Authority delegated to the CCB is limited to acting "on matters which are minor or routine or settled in nature and those in which immediate action may be necessary."[59] The CCB's action in changing the *de minimis* worksheet to include calculations of affiliate revenues, from both telecommunications and telecommunications services, is a significant departure from previous practice that substantially affects contribution obligations of such companies as Loral CyberStar. This decision was not minor, routine or settled in nature; it affected the substance of the underlying program, contrary to the limitations of the delegation. In this matter, the CCB acted well beyond the authority delegated by Commission.

F. The Bureau is Precluded From Giving the *De Minimis* Worksheet Retroactive Effect

A body of law that originated with *Bowen v. Georgetown University Hospital*[60] precludes federal agencies from promulgating substantive rules with retroactive effect. In *Bowen*, the Supreme Court decided that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." Congress has not explicitly granted to the Commission the ability to promulgate rules with retroactive effect, but with the revised *de minimis* worksheet, the Bureau has attempted to achieve such a result.

Loral CyberStar was advised in April 2000 that it was not required to contribute to universal service as a result of qualifying for the 8 percent exception. The form issued for filing in September 2000 was consistent with that advice. It was not until March 2001 that the *de minimis* worksheet, and the affiliate revenue rule, was changed. However, the April 2001 Form

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[59] 47 C.F.R. § 0.5(c).

[60] 488 U.S. 209 (1988).

is a "true-up." It measures revenues for the entirety of 2000, requiring Loral to recalculate its *de minimis* status for the entire year and to make contributions for the entire year based on those calculations.

Administrative law requires a strong presumption against retroactive rulemaking. Retroactivity "presents problems of unfairness because it can deprive [parties] of legitimate expectations and upset settled transactions."[61] By releasing the revised *de minimis* worksheet in March 2001 and requiring that the worksheet be filled out with respect to revenues received in 2000, the Bureau has promulgated a substantive rule with retroactive effect and upset the legitimate expectations of the parties expecting to be excluded from universal service contributions by the *de minimis* worksheet. Because the April 2001 Form attempts to reconcile differences in revenue by recalculating contributions for all of the previous year, entities that believed they were exempt from contributions in September 2000 may find that they are required to contribute to the universal service fund for the entirety of 2000 beginning in April. As such, the revision retroactively changes a provider's universal service contribution for 2000, in violation of *Bowen's* requirements.

In releasing a new worksheet for the calculation of the *de minimis* exception for universal service contributors, the CCB has violated the APA. First, the Bureau has effected a substantive change to the Commission's rules regarding affiliate revenue calculations on the *de minimis* worksheet, and has done so without the notice and comment required by the APA. Second, Loral CyberStar could justifiably rely on previous USAC and Bureau interpretations of the Commission's rules until such interpretations were changed pursuant to full notice and comment.

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[61] Eastern Enters. v. Apfel, 524 U.S. 498, 501 (1998).

Third, the Bureau has exceeded its ability to act under delegated authority. Finally, the Bureau has improperly given this rulemaking retroactive effect. For these reasons, Loral CyberStar respectfully requests that the Bureau reconsider its release of the revised *de minimis* worksheet.

IV. PROPOSED REMEDY OR REQUEST FOR WAIVER

Loral CyberStar requests that the Commission withdraw the *de mini*mis worksheet attached to the April 2001 Form and reissue the *de minimis* worksheet included with FCC Form 499-A (February 2000). This worksheet would remain in effect until the Commission considers the complex issues associated with the relationship between international and interstate services and the facts and circumstances which would equitably trigger the obligation of an international telecommunications provider to contribute to the Commission's interstate fund. Such examination was required by *Texas Office of Public Utility Counsel* but has yet to be undertaken.[62]

In the alternative, Loral CyberStar requests a waiver of the revised rule. The Commission "may waive any provision of its rules or orders if good cause is shown."[63] A showing of good cause requires the petitioner to demonstrate special circumstances that warrant deviation from the rules or orders, and to show how the deviation would serve the public interest. As discussed above, the abrupt and improper change to the Commission's *de minimis* worksheet will impose significant and unexpected costs on Loral, which relied appropriately on the

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62 It is not clear the degree to which the Commission can lawfully require contributions from international revenues. The Fifth Circuit rejected the Commission's attempt to impose a contribution on all international revenues. See Texas Office of Public Utility Counsel, 183 F.3d 393. The rule the Commission adopted in 1999, 47 C.F.R. § 54.706 (c), is currently subject to judicial review by that Circuit. See Comsat Corp. v. FCC, No. 00-60044 (5th Cir. filed Mar. 13, 2000).

63 See In re US West Communications, Inc. Petition for Computer III Waiver, *Order*, 11 FCC Rcd. 1195 at ¶ 32 (1995) (citing 47 C.F.R. § 1.3; Northwest Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

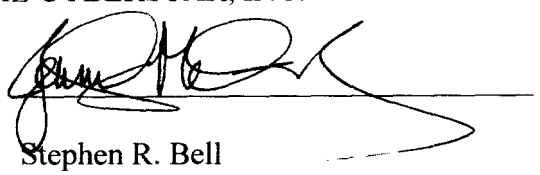
substance of previous universal service forms as well as advice received from USAC. Indeed, the extraordinary circumstances discussed in this petition may apply solely to Loral CyberStar. Until this issue can be resolved, the Bureau should grant Loral CyberStar a waiver of the requirement that it include interstate revenues from all of its affiliates when determining whether it meets the 8 percent and *de minimis* exceptions. A waiver would serve the public interest in that it would ensure that the Congressional mandate to impose universal service mechanisms that are equitable, specific, nondiscriminatory and predictable is achieved.

V. CONCLUSION

For all of the reasons set forth above, Loral CyberStar respectfully requests that the Commission reconsider the issuance of the revised April 2001 Form. In the alternative, Loral CyberStar requests that the Commission waive the application of the revised form to Loral CyberStar.

Respectfully submitted,

LORAL CYBERSTAR, INC.

By: 

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April 2, 2001

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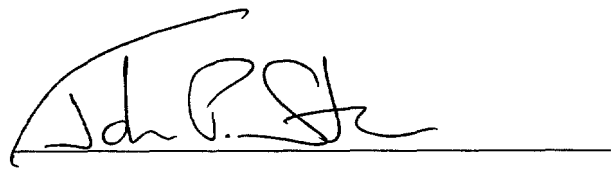
* Not admitted in D.C.

130243.2

DECLARATION

I, John P. Stern, hereby declare, under penalty of perjury under the laws of the United States, that the statements of fact made in this Petition for Reconsideration including those statements regarding correspondence sent to and received from the Universal Service Administrative Co. and conversations with the Universal Service Administrative Co. (except for those of which official notice may be taken) are true, complete and correct to the best of my knowledge and belief, and are made in good faith.



John P. Stern
Deputy General Counsel
Loral Space & Communications Ltd.

Date: Monday April 2, 2001

DECLARATION

I, Olga Madruga-Forti, hereby declare, under penalty of perjury under the laws of the United States, that the statements of fact made in this Petition for Reconsideration including those statements regarding correspondence sent to and received from the Universal Service Administrative Co. and conversations with the Universal Service Administrative Co. (except for those of which official notice may be taken) are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

O. Madruga-Forti

Olga Madruga-Forti
Vice President Legal & Regulatory
Loral CyberStar, Inc.

Date: 3/30/01

EXHIBIT 1

APRIL 2001 *DE MINIMIS* WORKSHEET

Figure 1: Table to determine if a contributor meets the *de minimis* standard for purposes of universal service contribution

1	Interstate contribution base for filer (amount reportable on filer's Form 499-A; Line 420(d))	$
2	International contribution base for filer (amount reportable on filer's Form 499-A; Line 420(e))	$
3	Interstate contribution base for all affiliates* (total of amounts reportable on Form 499-A; Line 420(d) for all affiliates of the filer)	$
4	International contribution base for all affiliates (total of amounts reportable on Form 499-A; Line 420(e) for all affiliates of the filer)	$
5	Consolidated interstate contribution base: Line (1) + Line (3)	$
6	Consolidated international contribution base: Line (2) + Line (4)	$
7	Total potential contribution base for filer and its affiliates: Line (5) + Line (6)	$
8	Combined interstate contribution base as a percentage of total potential contribution base: Line (5) / Line (7)	%
9	Interstate contribution base for filer from Line(1)	$
10	If the amount in Line (8) is equal to or greater than 8%, enter into Line (10) the international contribution base for the filer from Line (2). If the amount on Line (8) is less than 8%, enter $0	$
11	Contribution base for the filer for determining contributions to universal service support mechanisms: Line (9) + Line (10)	$
12	Estimation factor for determining whether to file a 499-A on April 1, 2001	0.070**
13	Estimated annual contribution: amount in Line (11) multiplied by Line (12)	$

* An affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." *See* 47 U.S.C. § 153(1).

** The estimation factor is slightly higher than the contribution factor announced for the first quarter of 2001. See Public Notice, DA 00-2764. Actual contribution factors for 2001 may increase or decrease depending on quarterly changes in program costs and the contribution base. Filers whose actual contribution requirements total less than $10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total $10,000 or more are required to contribute to the universal service support mechanisms and must file this worksheet.

EXHIBIT 2

APRIL 2000 *DE MINIMIS* WORKSHEET

Figure 1: Table to determine if a contributor meets the *de minimis* standard for purposes of universal service

1	Interstate contribution base (Form 499-A; Line 420(d))	$
2	International contribution base (Form 499-A; Line 420(e))	$
3	Total contribution base including international service revenue Line (1) + Line (2)	$
4	Interstate revenue as a percentage of contribution base Line (1) / Line (3)	%
5	Contribution base for determining contributions to universal service support mechanisms If the amount in Line (4) is equal to or greater than 8%, enter into Line (5) the amount in Line (3). If the amount on Line (4) is less than 8%, enter into Line (5) the amount in Line (1)	$
6	Estimation factor for January-December 2000	0.0459
7	Estimated Annual January-December 2000 Universal Service Contribution (Amount in Line (5) multiplied by Line (6))	$

2. Exception for government, broadcasters, schools and libraries

Certain additional entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves, *e.g.*, state networks for schools and libraries, are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to file or contribute directly to universal service. In addition, broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers are not required to file the worksheet or contribute directly to universal service.

3. Exception for Systems Integrators and Self Providers

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators are providers of integrated packages of services and products that may include the provision of computer capabilities, interstate telecommunications services, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision of telecommunications and computer equipment, equipment maintenance, help desk functions, and other services and products). Entities that provide services only to themselves or to commonly owned affiliates need not file.

EXHIBIT 3

USAC REFUND STATEMENT

USAC
UNIVERSAL SERVICE ADMINISTRATIVE CO.

Date: 03/21/2001
Invoice #: MISC819128
Filer 499 ID: 819128

Mail Payment To:

Universal Service Administrative Company
PO Box 371719
Pittsburgh, PA 15251-7719

Loral Orion Services, Inc.
2440 Research Blvd.
Suite 400
Rockville, MD 20850
Attention: Roger Ammons

STATEMENT OF ACCOUNT

Detail of Charges:

Date		Amount	Total
	Previous Balance		**$ (122,785.13)**
03/12/2001	Refund	122,785.13	
	Total Current Charges:		**$ 122,785.13**

Detail of Payments/Credits:

Date	Amount

Total Payments/Credits:	**$ 0.00**
Balance Due USAC:	**$ 0.00**

Payment must be received by 04/16/2001 to avoid late payment charges
Please remit pink copy with payment to ensure proper credit
Transactions occurring after 03/15/2001 are not reflected on this statement
Direct questions to the Fund Administrator - (973) 884-8598

EXHIBIT 4

SEPTEMBER 2000 *DE MINIMIS* WORKSHEET

Figure 1: Table to determine if a contributor meets the *de minimis* standard for universal service purposes

1	Interstate contribution base (Form 499-S, Line 116(b))	$
2	International contribution base (Form 499-S, Line 116(c))	$
3	Total contribution base including international service revenue Line (1) + Line (2)	$
4	Interstate revenue as a percentage of contribution base Line (1) / Line (3)	%
5	Contribution base for determining contributions to universal service support mechanisms If the amount in Line (4) is equal to or greater than 8%, enter into Line (5) the amount in Line (3). If the amount on Line (4) is less than 8%, enter into Line (5) the amount in Line (1)	$
6		0.5
7	Revenue stated on a quarterly basis Amount in Line (5) multiplied by Line (6)	
8	Estimation factor for January-December 2000	0.0554
9	Estimated Quarterly Universal Service Contribution Amount in Line (7) multiplied by Line (8)	
10	Annualizing factor	4
11	Estimated annual contribution for universal service support Amount in Line (9) multiplied by Line (10)	

2. Exception for government, broadcasters, schools and libraries

Certain additional entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves, *e.g.*, state networks for schools and libraries, are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or